

**A&K**  
**ADVANCED PROPERTY MANAGEMENT INC.**

EX PARTE OR LATE FILED

April 22, 1997

Secretary, Federal Communications Commission  
1919 M Street  
Washington, DC 20554

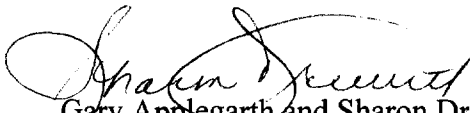
Re: Docket CS 96-83

I have enclosed copies of correspondence regarding installation of a DSS Satellite Dish on a roof of a Condominium project.

We are asking an opinion/direction for this installation. We are unable to understand a clear ruling as to condominiums where the Association maintains exterior of units, such as roofs, siding etc. We had received a letter in October 1996 stating that FCC ruling was being requested by this owner. We have not heard if an answer was sent to Mr. Latin.

We would appreciate your help in this matter.

Sincerely,

  
Gary Applegarth and Sharon Drewitt  
Association Managers  
Primrose Homeowner's Association

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**A&K**  
**ADVANCED PROPERTY MANAGEMENT INC.**

RECEIVED

APR 22 1997

FCC MAIL ROOM

April 22, 1997

Mr. Todd Latin  
7711 Juan Way #23B  
Fair Oaks, CA 95628

RE: Letter sent to FCC regarding installation of Satellite Dish 23B

Dear Mr. Latin:

At the Board Meeting on April 14, 1997, Management was asked to request a ruling from the FCC regarding your Satellite Dish.

Enclosed is a copy of a letter we will be sending today to the FCC for clarification. According to a letter written by you on October 24, 1996, you too were asking for FCC ruling. The Association has not been notified if you have received an answer from this request.

As soon as we received a ruling and/or directions on this, we will contact you. In the meantime, if you have any questions, please give us a call.

Sincerely,



Gary Applegarth and Sharon Drewitt  
Association Managers  
Primrose Homeowner's Association

RECEIVED  
8-5-96

PRIMROSE HOMEOWNERS ASSOCIATION  
APPLICATION FOR ARCHITECTURAL ALTERATION

Name: TODD LATIN .....

Phone No.: (916) 1967-9822 .....

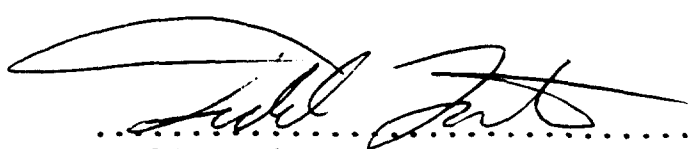
Unit Address: 7711 JUAN WAY #23-B  
.....  
FAIR OAKS, CA 95628  
.....

Mailing Address: SAME AS TO LEFT  
.....  
.....

Applicant must submit this form and a set of plans and specifications showing the nature, kind, shape, color, height, materials and location of the proposed alteration. This installation or construction must be made by a licensed contractor and a copy of his/her certificate of insurance must also accompany this application. This request will be considered for approval at the next regular meeting of the Board of Directors. The purpose of this application is to provide compatibility and harmony in construction throughout the community.

General Description of Proposed Work: INSTALL A DSS SATELITE DISH ON  
THE ROOF OF MY UNIT. THE DISH IS VERY SMALL ONLY 18" IN DIAMETER.  
ALLSTATE CONSTRUCTION IS THE CONTRACTOR WHO WILL INSTALL IT, AND  
THE PROOF OF INSURANCE IS ATTACHED.  
.....  
.....

(Attach plans, specifications or pictures)

  
.....  
Applicant's Signature

8/2/96  
.....  
Date



November 4, 1996

Mr. Ron Myron-Association Manager  
Primrose Homeowners Association  
A & K Property Management  
P.O. Box 1459  
Folsom, CA 95763-1459

Re: Response to Letter dated 10/28/96 Re: Satellite Dish Installation-Fine Appeal

Dear Ron,

I am in receipt of your letter dated 28 October 1996. It is still my position that the fine imposed by you and the association as it is out of your jurisdiction.

I have enclosed an additional copy of a document entitled, "FEDERAL COMMUNICATIONS COMMISSION FACT SHEET" for your review. In your letter you state that the "...Primrose Homeowners Association is a condominium development wherein the roof and its appurtenances are commonly owned. Page 3 of the F.C.C. information sheet clearly states that the F.C.C. is presently developing criteria for 'condominiums' via a proposed rule making and has not yet reached any conclusion."

While this statement is true, it is incomplete. I would like to turn your attention to page 4 of the "FEDERAL COMMUNICATIONS COMMISSION FACT SHEET". On page 4 there is a question and answer that I have copied verbatim below:

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the government or association trying to enforce the restriction will be responsible for proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the local government or association to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

This clearly demonstrates that the Primrose Homeowners Association has the burden of proving that the restriction is valid. As you noted, the F.C.C. has not yet ruled on our situation, however, the burden is upon you to prove validity to the F.C.C.. This matter has already been brought to the attention of the F.C.C. with my letter requesting a Declaratory Ruling of 24 October 1996. You are free to request a Declaratory Ruling yourself to meet your burden, however, since I have already brought it to the F.C.C.'s attention it is unnecessary. Unless you wish to proceed to Federal litigation, the matter is in front of the regulatory agency who has the sole jurisdiction to hear it.

Myron, Ron

11/4/96

Page 2 of 2

As to the fine appeal hearing scheduled for Monday 14 November 1996, I will not be able to attend due to night school on Monday, Wednesday and Thursday each week. Through my understanding of Federal Preemption Laws, the hearing is of little consequence since as noted above, the review is out of your jurisdiction. However, I would like an opportunity to be heard by the Board of Directors if they insist on the punitive action outlined in your 18 October 1996 letter. Unless the Board can meet on a Tuesday or Friday night, I will not be able to attend denying me of my due process rights.

I would also like to take this opportunity to point out that as agent of the Homeowners Association, you have a fiduciary duty to protect the assets of the association. The Board of Directors also has the same duty to protect the assets of the association. As there is a remedy to our dispute short of litigation, it is my position that if you do decide to pursue litigation, all of you would be in breach of your fiduciary duty.

As I mentioned in my previous letter, I do not think it is our best interests to squander resources on protracted legal fees when there is a Federal Procedure that applies in our dispute. However, if I am left no choice, I will as previously mentioned assert all my legal rights.

Sincerely,



Todd Latin

7711 Juan Way #23-B  
Fair Oaks, CA 95628  
(916) 966-8258

ENCLOSURES

cc: Paul Cambio, Esq.

FEDERAL COMMUNICATIONS COMMISSION  
FACT SHEET

August 1996

Placement of Direct Broadcast Satellite, Multichannel Multipoint  
Distribution Service, and Television Broadcast Antennas

As directed by Congress in the Telecommunications Act of 1996, the Federal Communications Commission has adopted rules concerning restrictions on viewers' ability to receive video programming signals from direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), and television broadcast stations (TVBS).

Receiving video programming from any of these services requires use of an antenna, and the installation, maintenance or use of these antennas may be restricted by local governments or community associations. These restrictions have included such provisions as requirements for permits or prior approval, and requirements that a viewer plant trees around the antenna to screen it from view, as well as absolute bans on all antennas. In passing this new law, Congress believed that local restrictions were preventing viewers from choosing DBS, MMDS, or TVBS because of the additional burdens that the restrictions imposed. To implement this legislation, on August 5, 1996, the Commission adopted a new rule that is intended to eliminate unnecessary restrictions on antenna placement and use while minimizing any interference caused to local governments and associations. This rule will become effective after it is approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act.

The new rule prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. These antennas include DBS satellite dishes that are less than one meter (39") in diameter (larger in Alaska), TV antennas, and antennas used to receive MMDS. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use, (2) unreasonably increase the cost of installation, maintenance or use, or (3) preclude reception of an acceptable quality signal. This rule means that, in most circumstances, viewers will be able to install, use and maintain an antenna on their property if they directly own the property on which the antenna will be located.

The Telecommunications Act and this new rule are designed to promote competition among video programming service providers, enhance consumer choice, and assure wide access to communications. The rule allows local governments and homeowners' associations to enforce restrictions that do not impair reception of these signals as well as restrictions needed for safety or historic preservation. The rule balances these public concerns with an individual's desire to receive video programming. The Commission has asked for further comment on whether additional rules should apply to situations where a viewer wants to install an antenna on property owned by a landlord or on common property controlled by a condominium or homeowners' association.

This fact sheet provides general answers to questions that may arise about the implementation of the rule. For further information, call the Federal Communications Commission at (202) 418-0163.

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a viewer's ability to

receive signals from a provider of DBS, MMDS or TVBS. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules or similar restrictions on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property. A restriction impairs if it: 1) unreasonably delays or prevents use of, 2) unreasonably increases the cost of, or 3) precludes a subscriber from receiving an acceptable quality signal from, one of these antennas. The rule does not prohibit safety restrictions or restrictions designed to preserve historic districts.

Q: What types of restrictions unreasonably delay or prevent subscribers from receiving a signal?

A: A local restriction that prohibits all antennas would prevent subscribers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also impair the ability to receive service. Thus, local regulations that require a person to obtain a permit or approval prior to receiving service will delay reception; this is generally allowed only if it is necessary to serve a safety or historic preservation purpose.

Q: What is an unreasonable additional cost to install, maintain or use an antenna?

A: Any requirement to pay a fee to the local authority in order to be allowed to install an antenna would be unreasonable, unless it is a permit fee that is needed to serve safety or historic preservation or a permit is required in the case of installation on a mast greater than 12 feet. Things to consider in determining the reasonableness of any costs imposed include: the cost of the equipment and services, whether there are similar requirements for other similar installations like air conditioning units or trash receptacles, and what visual impact the antenna has on the surroundings. Restrictions cannot require that relatively unobtrusive DBS antennas be screened by expensive landscaping. A requirement to paint an antenna in a fashion that will not interfere with reception so that it blends into the background against which it is mounted would likely be acceptable. In general, the costs imposed by local regulations cannot be unreasonable in light of the cost of the equipment or services and the visual impact of the antenna.

Q: What restrictions prevent a subscriber from receiving an acceptable quality signal?

A: A requirement that an antenna be placed in a position where reception would be impossible or would be substantially degraded would conflict with the rule. However, a regulation requiring that antennas be placed to the extent feasible in locations that are not visible from the street would be permitted, if this placement would still permit reception of an acceptable quality signal.

Q: Are all restrictions prohibited?

A: No, many restrictions are still valid. Safety restrictions are permitted even if they impair reception, because local governments bear primary responsibility for protecting public safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes, restrictions requiring that a



person not place an antenna within a certain distance from a power line, electrical code requirements to properly ground the antenna, and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person wanting to install an antenna knows what restrictions apply. The restriction cannot impose a more burdensome requirement than is needed to ensure safety.

Restrictions in historic areas may also be valid. Because certain areas are considered uniquely historical and strive to maintain the historical nature of their community, these areas are excepted from the rule. To qualify as an exempt area the area must be listed or eligible for listing in the National Register of Historic Places. In addition, the area cannot restrict antennas if such a restriction would not be applied to the extent practicable in a non-discriminatory manner to other other modern structures that are comparable in size, weight and appearance and to which local regulation would normally apply. Valid historical areas cannot impose a more burdensome requirement than is needed to ensure the historic preservation goal.

Q: Whose restrictions are prohibited?

A: Restrictions are prohibited in state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules or similar restrictions relating to what people can do on land within their exclusive use or control where they have a direct or indirect ownership interest in the property.

Q: If I live in a condominium where the land and the roof are commonly owned, or in an apartment building where the landlord owns the land and the roof, does this rule apply to me?

A: A Further Notice of Proposed Rulemaking has been adopted by the Commission, to obtain comments from interested persons about whether rules should apply in these situations. The Commission will use those comments to reach a decision on this question.

Q: What types of antennas are covered?

A: (1) A "dish" antenna that is one meter (39") or less in diameter or is located in Alaska and is designed to receive direct broadcast satellite service, including direct-to-home satellite service.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable). Such antennas may be mounted on "masts" to reach the height needed to establish line-of-sight contact with the transmitter. Masts higher than 12 feet may be subject to local permitting requirements.

(3) An antenna that is designed to receive television broadcast signals. Masts higher than 12 feet may be subject to local permitting requirements.

Q: What can a local government, association, or consumer do if there is a dispute over whether a particular restriction is valid?

A: If the local authority defines the restriction as safety-related it

is valid, unless a court or the Commission determines that it is not safety-related or is not the least burdensome way to ensure the safety goal. If a local government or association has "highly specialized or unusual" concerns about antenna installation, maintenance or use, it may apply to the Commission for a waiver of the rule, to have its restriction declared valid. Interested parties may petition the Commission or a court of competent jurisdiction for a ruling to determine whether a particular restriction is permitted or prohibited under this rule.

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the government or association trying to enforce the restriction will be responsible for proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the local government or association to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Who do I call if my town or neighborhood association is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (202) 418-0163. Some assistance may also be available from the direct broadcast satellite company, multichannel multipoint distribution service or television broadcast station whose service is desired.

- FCC -

[MAIL:DBS.TXT]

[FAX:DBS.TXT]

[EMAIL:DBS.TXT]



**ADVANCED PROPERTY MANAGEMENT INC.**

October 18, 1996

Mr. Todd Latin  
7111 Juan Way, Unit #23B  
Fair Oaks, CA 95628

**Re: Satellite Dish Installation - Fine**

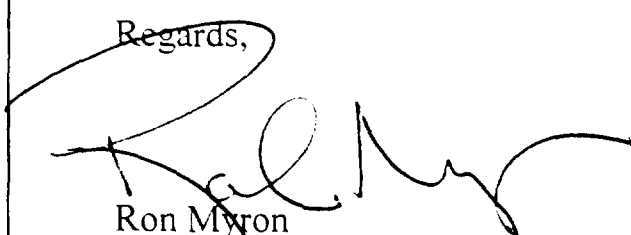
Dear Mr. Latin,

In a letter dated August 21, 1996, the association requested additional information regarding the installation of a satellite dish on your unit. However, during a recent property inspection it was noted that you have installed the satellite dish without architectural approval. This is a violation of the association's governing documents.

A fine of \$35.00 is being levied against you in accordance with the fine schedule of the Association. This fine is being collected as a special individual assessment and the collection policy of the Association will be enforced. This fine is due and payable within fifteen (15) days of this notice. Should you choose to appeal this fine, you may request a hearing before the Board. Such a request must be in writing and made within five (5) working days of the date of this notice.

Please be advised that you must remove the satellite dish within 15 days from the date of this letter or an additional fine will be imposed.

Regards,



Ron Myron  
Association Manager  
Primrose Homeowner's Association

RM/mc

Section 11. Cooperative Maintenance Obligations. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and all exterior wall and roofs of Condominiums, including but not limited to recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives and, to the extent necessary or desirable to accomplish such maintenance, individual Owners shall cooperate with the Association and its agents in the prosecution of its work.

Section 12. Interior Improvements. No Owner shall undertake any action or work interior that will impair the structural soundness or integrity of the Owner's or some other Condominium or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect the other Condominiums or their Owners.

Section 13. No Alterations or Antennas. In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Property, no Owner, resident or lessee shall construct fences, wall, or make any alterations, additions or modifications to or on any part or portion of the Common Area or exterior surfaces of residential Units, or place or maintain any object, such as masts, towers, poles, or television and radio antenna, on or about the exterior of any building within the Property, except as authorized by the Association. No construction or alteration of improvements may be undertaken on or within any Condominium without approval of the Architectural Advisory Committee.

Section 14. Use of Carports and Guest Parking Areas. The carports are to be used for the parking of cars, boats or similar items for storage purposes. They are not to be converted for any type of living or recreational activities. Guest parking areas are to remain open for guest parking and are not to be used for the parking of boats, trailers, campers, or other recreational vehicles.

Section 15. Barbecues. There shall be no exterior fires whatsoever except barbecue fires located on the Property and contained within receptacles designed for such purpose.

Section 16. Basketball Standards. No basketball standards or fixed sports apparatus shall be attached to any exterior building surface or carport within the Property unless the prior written consent of the Architectural Advisory Committee is obtained.

Section 17. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit by any Owner, except such machinery or equipment as is usual or customary in connection with the use, maintenance or construction of a private residence or appurtenant structures within the Property.